IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

S.A.O. No. 12 of 1993
Date of decision December 6, 2006

Duli Chand

.....Petitioner

Versus

Ram Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINEY MITTAL

Present:- Sh. Parbodh Mittal, Advocate
for the appellants.

Sh. Sanjay Mittal, Advocate
for the respondents.

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Viney Mittal, J (Oral)

The present appeal has been filed by Lal Singh and others who claim themselves to be legal heirs of Duli Chand-original plaintiff. They have challenged the order dated January 11, 1993 passed by the learned Additional District Judge, Narnaul, whereby an application filed by the appellants under Order 22 Rule 3 of the Code of Civil Procedure (hereinafter referred to as the 'Code') for being impleaded as legal representatives of Duli Chand, deceased has been dismissed and as a consequence thereof, the appeal filed by Duli Chand has been dismissed as having been abated.

The facts, which emerge from the record, show that Duli Chand originally filed a suit for declaration challenging the Will dated January 13, 1982 alleged to have been executed by one Murli in

favour of the defendants Ram Singh and Niranjan. The plaintiff Duli Chand had also consequently, challenged the mutation in favour of the defendants on the basis of said Will. The suit filed by the plaintiff-Duli Chand was dismissed by the trial Court vide judgment and decree dated December 14, 1988. The said judgment and decree were challenged by Duli Chand by filing an appeal on January 6, 1989. During the pendency of the aforesaid first appeal Duli Chand died on September 28, 1990.

After the death of Duli Chand, the present appellants filed an application under Order 22 Rule 3 of the Code claiming that they are legal representatives of Duli Chand on the basis of a Will dated October 19, 1984, which was executed by Duli Chand in their favour. The aforesaid application filed by the applicants was contested by the defendants (respondents in appeal). On the aforesaid contest being offered, the learned Appellate Court vide an order dated January 22, 1991 sought a report from the trial Court with regard to execution of the said Will dated October 19, 1984 Ex. A-1. The learned trial judge submitted a report dated December 19, 1991. It was held that the Will Exh. A-1 was shown to be executed by Duli Chand in favour of the applicants.

Against the aforesaid report submitted by the trial court, the defendants filed objections. The aforesaid objections have been accepted by the Appellate Court. Vide order dated January 11, 1993, the learned Appellate Court has held that the Will Ex. A-1 was not shown to be executed by Duli Chand, and as such, held the same not proved. As a result thereof, the application filed by the applicants, for being impleaded as legal representatives of Duli Chand, has been dismissed. Consequently, the appeal filed by Duli Chand had been dismissed as having been abated.

It is, in these circumstances, that the applicants are appellants before this Court.

I have heard Sh. Parbodh Mittal, learned counsel for the appellants and Sh. Sanjay Mittal, learned counsel for the respondents and with their assistance have gone through the record of the case.

At the outset, it may be noticed that when an application is filed under Order 22 Rule 3 or 4 of the Code by any person claiming to be legal representative of the deceased plaintiff/defendant or appellant/respondent, then under the provisions of Rule 5 of Order 22, an inquiry has to be held by the Court to determine as to whether the aforesaid applicant is legal representative of the deceased party and as to whether the cause of action had survived to him or not. However, the inquiry envisaged under Rule 5 of Order 22 is merely summary in nature and cannot take the place of a declaration which is required to be given in a regular civil suit by the Court. The aforesaid proposition of law has already been settled by a Full Bench of this Court in the case of **Mohinder Kaur Vs. Piara Singh** AIR 1981, Punjab and Haryana 130.

In these circumstances when a report had been submitted by the trial Court on December 19, 1991 and the Will Ex. A-1, claimed to be executed by Duli Chand, was so held to be executed in favour of the applicants, the Appellate Court was not justified to hold any further inquiry into the matter. The report submitted by the trial Court should have been accepted without any further inquiry. Of course, the report submitted by the trial Court could not be taken to have determined the rights of the parties finally, but was to be treated only for the purpose of bringing on record the legal representatives of the deceased Duli Chand and for the purpose

of representaton of estate of Duli Chand in the present proceedings. The rights of the parties, in any case, are liable to be determined in a regular civil suit.

In view of the law laid down by the Full Bench in **Mohinder Kaur's case (supra)** and on interpretation of provisions of under Rule 5 of Order 22 of the Code, order dated January 11, 1993 passed by the learned Additional District Judge, Narnaul cannot be sustained.

In these circumstances, the present appeal is allowed. The order dated January 11, 1993 passed by the Additional District Judge, Narnaul is set aside.

The appeal filed by Duli Chand is restored back to its original number. The applicants/appellants are ordered to be impleaded as legal representatives of Duli Chand and shall be entitled to prosecute the aforesaid appeal in accordance with law. However, it is made clear that the report dated December 19, 1991 submitted by the trial Court Ex. A-1, shall not be taken to be conclusive, as far as the rights of the parties are concerned, nor the said report shall be treated to be binding in any subsequent proceeding or any Civil suit which may be filed, by either of the parties for determination of their rights qua the Will dated October 19, 1984.

Any of the parties would be at liberty to file a Civil suit with regard to the Will dated October 19, 1984, in accordance with law.

The parties through their learned counsel are directed to appear before the Additional District Judge, Narnaul on January 18, 2007.

A copy of the order be given dasti on payment of charges for urgent copies.

(VINEY MITTAL)
JUDGE

December 6, 2006
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